S. HRG. 98-34

TAX PROVISIONS AFFECTING CONGRESSIONAL AWAY-FROM-HOME EXPENSES

HEARING

BEFORE THE

SUBCOMMITTEE ON
TAXATION AND DEBT MANAGEMENT

OF THE

COMMITTEE ON FINANCE
UNITED STATES SENATE

NINETY-EIGHTH CONGRESS

FIRST SESSION

ON

S. 70

FEBRUARY 25, 1983

Printed for the use of the Committee on Finance

U.S. GOVERNMENT PRINTING OFFICE
18-038 O WASHINGTON : 1983

S361-24

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TAX PROVISIONS AFFECTING CONGRESSIONAL AWAY-FROM-HOME EXPENSES

FRIDAY, FEBRUARY 25, 1983

U.S. SENATE,
SUBCOMMITTEE ON TAXATION AND DEBT MANAGEMENT,
COMMITTEE ON FINANCE,
Washington, D.C.

The subcommittee met, pursuant to notice, at 8:30 a.m., in room SD-215, Dirksen Senate Office Building, Hon. Bob Packwood (chairman of the subcommittee) presiding.

Present: Senator Packwood and Senator Long.

Also present: Senator Specter.

[The press release announcing the hearing, the opening statement of Senator Dole, description of S. 70 by the Joint Committee on Taxation and the text of the bill S. 70 follows:]

[Press release No. 83-108, Feb. 8, 1983]

FINANCE SUBCOMMITTEE ON TAXATION AND DEBT MANAGEMENT SETS HEARING ON TAX PROVISIONS AFFECTING CONGRESSIONAL AWAY-FROM-HOME EXPENSES

Senator Bob Packwood, Chairman of the Subcommittee on Taxation and Debt Management of the Senate Committee on Finance, announced today that the subcommittee will hold a hearing on Friday, February 25, 1983, on legislation affecting the tax treatment of away-from-home expenses of Members of Congress.

The hearing will being at 8:30 a.m. in SD-215 (formerly 2221) of the Dirksen Senate Office Building.

The following proposal will be considered:

S. 70—Introduced by Senator Long for himself, Senator Proxmire, and Senator Specter. S. 70 would repeal the statutory rule that a Member's residence in his home State or district is his tax home.

STATEMENT OF SENATOR BOB DOLE

INTRODUCTION

Today the Subcommittee on Taxation and Debt Management will be considering proposed legislation in an area that is always difficult for Congress to address. That area, of course, is the area of legislation dealing with the unique legal problems faced by Members of Congress.

Whether we are dealing with questions of Members' salary and expenses, which under the Constitution we must set for ourselves, or the tax problems that are unique to the lifestyle of a legislator in a representative democracy, the policy discussions, legislative debate, and accompanying news reporting somehow always seem to generate much more heat than light on the subject. I have every reason to hope that today's hearing will be different, and will illuninate the issues presented by the legislation introduced by Senators Long, Proxmire and Specter.

THE ISSUES

The first question to answer is whether Members of Congress, who may incur duplicated living expenses in the Nation's capital and in their home state or district, should be permitted to deduct some of their expenses as costs of travelling away from home on business. If one desires to treat Members nc worse and no better that other taxpayers, that question would obviously be answered in the affirmative.

Unfortunately, as we learnded in the 97th Congress, that answer only begins the question and answer process involved in this problem. Where is a Member's home, and when is a Member of Congress away from home? When is a spouse accompanying the Member coming along for business reasons and when for personal reasons? When is a Member traveling for business reasons, and when for political purposes?

The list of questions is not endless, but it is pretty long. And so, for 30 years we had a simple answer. A Member's home is his district, but deductible away from home expensees in Washington cannot exceed $3,000 per year.

ACTION DURING THE 97TH CONGRESS

During the last Congress, we experimented with alternatives to this simple, but spartan approach. First, in light of dramatically increased living costs since 1952 (when the $3,000 cap was imposed), we removed the $3,000 cap. To set the record straight, the Senator from Kansas neither proposed that change, nor advocated it on the Senate floor. I did believe that the change was fair, however.

Some weeks later, some of us with some knowledge of the tax law, discovered the virtues of simplicity, and the complex problems involved in substantiating Washington living expenses. I proposed a rule for Members similar to the rule Congress had adopted in 1976 for State legislators, and also similar to the IRS rules for businessmen traveling on an expense account. The simple approach was to allow a per diem amount, established by the Treasury, that would be deductible for each Congressional day. The rule contained strict instructions to the Treasury that the per diem could not exceed a reasonable amount. The Treasury rules were simple and fair, I believe, but no longer spartan. The press, of course, never forgave us for trying to make it possible for nonmillionaires to serve in public office, by allowing a reasonable deduction for legitimate, and quite real business expenses.

The simple and reasonable rules were, of course, repealed, in favor of the old simple and spartan approach.

The simple and reasonable rules were, of course, repealed, in favor of the old simple and spartan approach.

THE LEGISLATIVE PROPOSAL AT ISSUE

That is what Senators Long, Proxmire, and Specter seek to change. I commend them for their efforts to reform the tax law, but I have some concerns about their approach. I have some doubts as to whether it is truly "fair" to ask Members to deal with the tax problem of away from home expenses without any special rules. Can a Member's tax home be determined simply or easily? And if Members are all treated differently, will that be perceived by the public as fairness, or unfairness?

Finally, it should be noted that Members of Congress are not always treated "just like other taxpayers" if they have the misfortune of disputing an IRS audit. Can a Member really take his case to the Tax Court if he thinks the IRS is wrong? Technically, yes. But how will the press or his political opponents portray the confrontation?

WELCOME TO OUR DISTINGUISHED WITNESSES

I look forward to hearing the testimony of our distinguished witnesses on these difficult questions. I am grateful to Senators Specter, Proxmire, and Long for having the courage and interest to address this issue again.

DESCRIPTION OF S. 70

RELATING TO AWAY-FROM-HOME EXPENSES OF MEMBERS OF CONGRESS

SCHEDULED FOR A HEARING

PREPARED FOR THE USE OF THE

COMMITTEE ON FINANCE

BY THE STAFF OF THE

JOINT COMMITTEE ON TAXATION

INTRODUCTION

This pamphlet provides a description of S. 70 (introduced by Senators Long, Proxmire, and Specter), pertaining to the tax treatment of away-from-home expenses of Members of Congress. The Senate Finance Subcommittee on Taxation and Debt Management has scheduled a public hearing on the bill on February 25, 1983.

The first part of the pamphlet is a summary of the bill. This is followed in the second part with a description of present law. The third part discusses the historical development of rules affecting Members of Congress. Part four is a description of the provisions of the bill.

I. SUMMARY

In general, an individual is allowed a deduction from gross income for all ordinary and necessary expenses incurred in carrying on any trade or business. Deductible expenses include reasonable and necessary travel expenses, including expenses for meals, lodging, and transportation, incurred while away from home overnight in the pursuit of a trade or business.

The deduction of travel expenses is subject to certain limitations. In general, out-of-pocket travel expenses for meals and lodgings incurred by a taxpayer are deductible only if they are (1) incurred while away from home overnight, (2) reasonable and necessary for the taxpayer's business and directly attributable to it, (3) not lavish or extravagant, (4) not reimbursable, and (5) properly substantiated. No deductions are allowed for personal, living, and family expenses except as expressly allowed under the Code.

Like other businessmen, Members of Congress may deduct ordinary and necessary business expenses, including travel expenses incurred while away from home overnight in the pursuit of a trade or business. The law provides expressly that the home of a Member of Congress for tax purposes is the Member's place of residence within the home State or district. Additionally, the amount deducted for living expenses incurred in the Washington, D.C. area by a Member of Congress may not exceed $3,000.

The bill (S. 70) described in this pamphlet would repeal all rules expressly governing the travel expenses of Members of Congress. The determination of each Member's tax home and the amount deductible for travel expenses by each Member would be determined in accordance with the general principles applicable to all taxpayers.

II. PRESENT LAW

A. Overview

General rule

In general, an individual is allowed a deduction from gross income (i.e., an "above-the-line" deduction) for all ordinary and necessary expenses incurred in carrying on any trade or business. Deductible expenses include travel expenses, such as meals, lodging, and transportation, incurred while away from home overnight in the pursuit of a trade or business (sec. 162(a)(2)).

The cost of meals includes the actual cost of food and expenses incident to preparation and serving. The cost of lodging includes rental, repairs, insurance, laundry and utilities. Lodging costs also include depreciation on a house and household furnishings owned by the taxpayer and used while away from home on business. Mortgage interest and real estate taxes are deductible under other provisions of the Code (secs. 163 and 164).

The taxpayer must substantiate both the amount and business purpose of an expense. In general, this requirement may be met by adequate records or sufficient evidence corroborating the taxpayer's statements regarding the amount, time, place, and business purpose of the expenditure.

For determining the deductibility of travel expenses, a taxpayer's home generally is considered to be located at his regular place of business or his regular place of abode in a real and substantial sense.

No deductions are allowed for personal, living, and family expenses, except as expressly allowed under the Code.

General requirements for deductibility of business expenses

The deduction of travel expenses is subject to certain limitations. In general, out-of-pocket travel expenses for meals and lodgings incurred by a taxpayer are deductible only if they are (1) incurred while away from home overnight, (2) reasonable and necessary for the taxpayer's business and directly attributable to it, (3) not lavish or extravagant, (4) not reimbursable, and (5) properly substantiated.

B. Away from Home Overnight

For travel expenses to be deductible, a taxpayer must be "away from home." The Internal Revenue Service and the Tax Court take the position that a person's tax home means the location of the taxpayer's principal place of business, and not where the taxpayer chooses to maintain his residence. Other courts have used a permanent place of abode test. The Supreme Court has yet to take a position on the issue. However, the Supreme Court has indicated that

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when the employer gains nothing from the taxpayer's personal decision to reside in a different city from the place of business, the expenses are not considered to be incurred in the pursuit of business and therefore are treated as nondeductible personal expenses.[1]

If the taxpayer is regularly engaged in business at two or more separate locations, the Internal Revenue Service has ruled that the taxpayer's home is considered to be located at his principal place of business.[2] The courts have held that, when a taxpayer has two places of business, the taxpayer's home will be determined by considering (1) the length of time the taxpayer spends in each location; (2) the degree of the taxpayer's business activity in each place; and (3) the relative proportion of the taxpayer's income derived from each place.[3] If a taxpayer maintains his family residence at the minor place of business, travel from the principal place of business to the minor business location is considered to be travel away from his tax home when the primary purpose for the return to the location of his residence is business in nature.

A taxpayer does not necessarily lose his tax home when he works at a different location for a temporary period of time. However, if the stay is indefinite, the taxpayer may be considered to have changed his tax home. In determining whether a job is temporary or permanent, all facts and circumstances are considered. The Internal Revenue Service views a one-year or more stay as strongly indicating a presence beyond a temporary period.[4]

In general, the taxpayer's home includes the general area surrounding his regular place of business. Also, it is well settled that "away from home" includes only overnight trips or trips on which a stop for sleep is required.

C. Business versus Personal Expenses

Overview

Expenses incurred while away from home overnight are deductible only to the extent reasonable and necessary to the taxpayer's trade or business. Thus, it is necessary to distinguish business expenses from personal or family expenses. A taxpayer may not deduct as a business expense clothing, medical expenses, and charitable contributions, although medical expenses and charitable contributions may be deductible under other provisions of the Code. Clothing generally is considered a nondeductible personal expense.

Spouse's presence

In general, expenses attributable to the presence of a spouse (or other family member) are not deductible unless it can be shown adequately that the spouse's presence has a bona fide business purpose. The performance of some incidental service by the spouse or child does not constitute a bona fide business purpose.

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[1] *Commissioner* v. *Flowers*, 326 U.S. 465 (1946), *rev'g*, 148 F.2d 163 (5th Cir. 1945).
[2] Rev. Rul. 75-432, 1975-2 C.B. 60.
[3] *Markey* v. *Commissioner*, 490 F.2d 1249 (6th Cir. 1979), *rev'g* T.C. Memo 1972-154; *Blue* v. *Commissioner*, T.C. Memo 1982-486.
[4] Rev. Rul. 60-189, 1960-1 C.B. 60.

A business purpose does not include acting as a hostess at receptions,[5] or assisting in making business acquaintances.[6] Merely attending luncheons and dinners is not sufficient to establish a business purpose.[7] However, the court in *United States* v. *Disney*[8] held that the travel expenses of the wife of a corporation president are deductible if the dominant purpose of the wife's presence was to serve her husband's business purpose in making the trip and it was reasonable and necessary (and not merely helpful) for her to spend a substantial amount of her time assisting her husband in fulfilling that purpose. In holding that Mrs. Disney's presence was necessary to her husband's business on that trip, the court noted that if Mr. Disney had held a less powerful executive position, it would have considered the presence of the wife necessary only if employer insistence on her presence amounted to a condition of employment.

Incidental personal activity

The Internal Revenue Service has ruled that an employee can deduct not only his expenses for meals and lodging while making trips to and from a temporary post, but also expenses for meals and lodging for the entire time during which his duties prevent him from returning to his regular post of duty.[9] One court has held that a State Supreme Court Justice who was required to spend the 9-month court term away from home could deduct rent for an entire year since he was required to sign a 1-year lease to obtain an apartment for the 9-month year.[10] The court stated that there is no requirement that a person on business at a temporary post stay in a hotel or other transient residence.

Allocation between business and personal expenses

If a taxpayer's expenses while away from home are both business and personal, the taxpayer must make an allocation to determine what portions of the expenses are deductible. For example, if the taxpayer were unable to show a business purpose for the presence of a family member, the taxpayer would have to exclude that portion of the expenses attributable to the family member.

In general, the required allocation must be made on an incremental basis. For example, if a taxpayer stays in a hotel, the difference between a single rate and a multiple occupancy rate would be nondeductible. One court has held, though, that if a child is present in a rented apartment at a temporary business location for only a very short time (i.e., a few weekends and part of one month), no allocation is required since the apartment was not provided to supply the child with a place to stay.[11] Also, the court did not require an allocation for the wife's use of the apartment. It is unclear whether an allocation would have been required if the dwelling unit had been a house or large apartment. The size of the dwelling might indicate a nonbusiness purpose of providing lodging for

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[5] *See, Sheldon* v. *Commissioner,* 299 F.2d 48 (7th Cir. 1962), *aff'g,* T.C. Memo 1961-44.
[6] *See, Fenstermaker* v. *Commissioner,* T.C. Memo 1978-210.
[7] Rev. Rul. 56-168, 1956-1 C.B. 93.
[8] 413 F.2d 783 (9th Cir. 1969).
[9] Rev. Rul. 75-432, 1975-2 C.B. 60.
[10] *United States* v. *LeBlanc,* 278 F.2d 571 (5th Cir. 1960).
[11] *United States* v. *LeBlanc,* supra.

family members. With respect to meals, all costs attributable to the family member would be nondeductible.

Special limitations on personal use of residence

Prior to enactment of section 113 of the Black Lung Benefits Revenue Act of 1981 (Pub. L. 97-119), the application of the tax rules governing business use of a home (sec. 280A) [12] could have resulted in denial of lodging expenses otherwise deductible as traveling expenses. This denial of expense deductions could have occurred, for example, when a taxpayer who had purchased a condominium in an out-of-town location for use on frequent business trips was accompanied by family members on more than 14 days during the year.

D. Lavish or Extravagant Expenses

Under the general rule, business expenses must be ordinary and necessary to the conduct of business. For meals and lodging, which are listed as travel expenses included within the general rule, the statute specifically excludes expenses that are "lavish or extravagant under the circumstances."

E. Reimbursement

In general, amounts are not deductible to the extent they do not represent an actual out-of-pocket expense. Thus, an expense for which a taxpayer is entitled to reimbursement is not deductible. The courts have held that reimbursable expenses for which a taxpayer fails to request reimbursement generally are not considered necessary expenses and thus are not deductible by the taxpayer.[13]

The Internal Revenue Service has ruled that to the extent government officials can establish that they incurred unreimbursable expenses directly in connection with their official duties, out-of-pocket expenses may constitute a charitable contribution.[14] The courts have applied the same rule to out-of-pocket expenses for which reimbursement was available but not claimed because of a desire to make a donation to the charity.[15]

F. Substantiation

No deduction for travel expenses (including meals and lodging) is allowed unless the taxpayer substantiates the expenditures. In general, to meet the substantiation requirements, a taxpayer must maintain an account book, diary, statement of expense or similar record supported by documentary evidence such as receipts, paid bills, and cancelled checks. The records and documentary evidence must clearly establish the elements of each expenditure sought to be deducted, namely, the amount, time, place, and business purpose

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[12] Section 280A was enacted as part of the Tax Reform Act of 1976 to replace vague standards on which the courts and the Internal Revenue Service differed concerning the deductibility of expenses incurred in connection with use of the taxpayer's home in a trade or business or income producing activity or in connection with the rental of vacation homes and other residential real estate.

[13] *See, Coplon* v. *Commissioner*, 277 F.2d 534 (6th Cir. 1960), *aff'g.* T.C. Memo 1959-34; *Kennelly* v. *Commissioner*, 56 T.C. 936 (1971), *aff'd without opinion*, 456 F.2d 1335 (2nd Cir. 1972).

[14] *See*, Rev. Rul. 59-160, 1959-1 C.B. 59.

[15] *Wolfe* v. *McCaughn*, 5 F. Supp. 407 (E.D. Pa. 1933).

of the expense. The record of these elements must be made at or near the time of the expenditure. Documentary evidence is specifically required for lodging expenses and for any other expenditure of $25 or more. A written statement of the business purpose of an expenditure is generally required, unless such business purpose is evident from the facts and circumstances surrounding the expenditure.

Under certain circumstances, an employee reimbursed for travel by the employer under a subsistence or per diem arrangement is not required to substantiate the amount of the expense or report the reimbursement as income. To qualify, (1) the employee must adequately account to the employer, and (2) the reimbursement must not exceed actual business expenses. The adequate accounting requirement will be considered met if (1) the employer reasonably limits payments of travel expenses to those that are ordinary and necessary in the conduct of a trade or business, (2) the employee substantiates by records or other evidence the time, place, and business purpose of the travel, and (3) the reimbursement does not exceed the greater of $44 or the maximum Federal per diem applicable for the locality in which the travel occurs.[16]

The Internal Revenue Service will rule that an employer reasonably limits payments under an actual subsistence arrangement to ordinary and necessary expenses if the employer maintains adequate internal controls, such as requiring verification and approval of the expense account by a responsible person other than the employee. For per diem arrangements, the Internal Revenue Service must determine if the employer's travel allowance practices are based on reasonably accurate estimates of travel costs, including recognition of cost variances encountered in different localities. If the employer's reimbursement arrangement is considered to reasonably limit payments to ordinary and necessary expenses but the payment on any occasion exceeds deductible business expenses, the employee must report the excess as income. If the taxpayer wants to deduct actual expenses exceeding the reimbursement, the employee must include the reimbursement in income and substantiate all deductions.

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[16] Rev. Rul. 80-62, 1980-1 C.B. 63, as modified by Rev. Rul. 80-203, 1980-2 C.B. 101.

III. HISTORICAL DEVELOPMENT OF RULES AFFECTING MEMBERS OF CONGRESS

A. Overview

Like other businessmen, Members of Congress may deduct ordinary and necessary business expenses, including travel expenses incurred while away from home overnight in the pursuit of a trade or business. In general, the same limitations on deductibility applicable to other businessmen apply to Members of Congress.

The rules with respect to Members of Congress have, at various times, been explicitly provided by statute in three areas: (1) the determination of their tax homes, (2) the maximum amount deductible as living expenses in Washington, and (3) the rules relating to substantiation of Washington expenses. Present law provides expressly that the tax home of a Member of Congress is the Member's place of residence within the home State or district. Additionally, the amount deductible as living expenses in Washington may not exceed $3,000. Present law contains no special provision regarding substantiation of Washington expenses by Members of Congress.

B. Tax Home and Limitations on Deductions

Prior to 1952, the Board of Tax, Appeals in *George W. Lindsay* [17] had held that, on the facts of that case, the home of that Member of Congress was Washington, D.C. The Court based its conclusion largely on the fact that, under then existing law, the official duties of Members of Congress were to be performed in Washington, D.C.

In 1952, Congress amended the Code to provide a uniform rule under which the tax home of any Member of Congress would be considered his or her residence within the home State or district (Pub. L. No. 83–178).[18] However, under the amendment, a Member could deduct only $3,000 of living expenses incurred in Washington, D.C.

The legislative history of the 1952 amendment and the case law suggest that the amendment did not waive the requirement that the trip must include an overnight stay.[19] Under this interpretation, a Member who commuted to Washington from the home State

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[17] 34 B.T.A. 840 (1936).

[18] Prior to the Tax Reform Act of 1976, there was no special rule for ascertaining the location of a State legislator's tax home. As a result, the generally applicable rules, described above, determined the location of a State legislator's tax home. In general, the courts held that if a State legislator who has no other trade or business is required to spend most of his working time at the State capitol, that area is considered to be his principal post of duty and, under the principal place of business test, his tax home. *Montgomery* v. *Commissioner*, 532 F.2d 1088 (6th cir. 1976), *aff'g*, 64 T.C. 175 (1975). Present law allows a State legislator to elect, for any taxable year, to treat his residence within the legislative district as his or her tax home for purposes of computing the deduction for expenses.

[19] *See*, 98 Congressional Record 5280 (1952); *Chappie* v. *Commissioner*, 73 T.C. 823, 831 (1980).

on a daily basis and did not stay in Washington overnight could not deduct travel expenses (e.g., meals and transportation). Those expenses would be treated as nondeductible personal commuting expenses.[20] It was unclear whether a Member who lived within commuting distance of Washington but stayed overnight in Washington could deduct travel expenses. The Internal Revenue Service takes the position that a person's tax home is the general area surrounding the person's abode.[21] If the Members' place of residence within the home State was within commuting distance of Washington, Washington might be considered within the area of the Member's home. Under that interpretation, travel expenses could be denied even if the Member stayed overnight in Washington.

C. Recent Legislative Actions

In 1981, Congress enacted several further changes affecting the deductibility of travel expenses of Members of Congress. As part of the First Continuing Resolution, Congress repealed the $3,000 cap on the deduction of a Member's living expenses in Washington, D.C.

The Black Lung Benefits Revenue Act of 1981 also made changes affecting the deductibility of travel expenses of Members of Congress. For all taxpayers, including Members of Congress, the Act makes clear that the rules under section 280A disallowing lodging costs in connection with business use of a home do not apply with respect to travel expenses allowable under section 162(a)(2) (or any deduction that meets the tests of that section but is allowable under a different section). Also, the Act added a provision requiring Treasury to prescribe amounts deductible as travel expenses by Members of Congress without substantiation. Under the Act, Treasury could not prescribe an amount in excess of an amount determined to be appropriate under the circumstances.

Pursuant to the Black Lung Benefits Revenue Act of 1981, the Treasury Department issued regulations in temporary and proposed form prescribing amounts deductible by Members of Congress without substantiation. In general, the regulations allowed Members of Congress to elect to deduct a designated amount as travel expenses for each Congressional day in the year in lieu of substantiating their actual travel expenses. The amount deductible was determined by reference to the maximum amount of reimbursement available to a government employee traveling to Washington, D.C., which at the time was $75. The number of Congressional days for a Member was the number of days in the taxable year less the number of days in periods in which the Member's Congressional chamber was not in session for 5 consecutive days or more (including Saturday and Sunday).

In 1982, Congress reversed two of the major changes made in 1981 affecting the deductibility of travel expenses of Members of Congress. As part of the Urgent Supplemental Appropriations Act of 1982, Congress restored the $3,000 cap on the deductibility of

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[20] Although a deduction for meals while in Washington might not be allowed as a travel expense under section 162(1)(2) the cost of business meals in surroundings generally conducive to business discussions would be deductible under general business expense rules.

[21] Rev. Rul. 190, 1953-2 C.B. 303.

living expenses incurred by Members of Congress in the Washington, D.C. area for business purposes. The Act also eliminated the special rule permitting Members to deduct a designated amount for travel expenses in lieu of substantiation. The rule designating as the tax home of a Member of Congress the member's residence within the home state or district remained in effect. Congress also retained the 1981 amendment to section 280A that affects the deductibility of expenses incurred in connection with business use of a home.

The provisions of the Urgent Supplemental Appropriations Act of 1982 affecting deductibility of travel expenses of Members of Congress were made effective for taxable years beginning after December 31, 1981. As a result, the changes made in 1981 (no cap on deductions and amounts deductible without substantiation) were effective only for the year 1981.

IV. DESCRIPTION OF THE BILL (S. 70)

Explanation of Provisions

The bill would repeal all rules expressly governing the deductibility of travel expenses by Members of Congress. The bill would repeal the rule designating as the tax home of a Member of Congress the Member's residence within the home State or district. The determination of a Member's tax home would be made on a case-by-case basis under the general principles applicable to all taxpayers. The bill would repeal the $3,000 cap on the deductibility of living expenses incurred by Members of Congress in the Washington, D.C. area for business purposes. The amount deductible as travel expenses by each Member would be determined in accordance with the general principles applicable to all taxpayers, including the rules regarding substantiation of business expenses. The bill would retain the 1981 amendment to section 280A that affects the deductibility of expenses by all taxpayers incurred in connection with the business use of a home.

The bill would not affect the liability of Members of Congress for State and local taxes.

Effective Date

The bill would apply to taxable years beginning after December 31, 1982.

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II

98TH CONGRESS
1ST SESSION

S. 70

To delete the provisions of the Internal Revenue Code of 1954 which treat Members of Congress separately with respect to living expense deductions.

IN THE SENATE OF THE UNITED STATES

JANUARY 26 (legislative day, JANUARY 25), 1983

Mr. LONG (for himself, Mr. PROXMIRE, and Mr. SPECTER) introduced the following bill; which was read twice and referred to the Committee on Finance

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A BILL

To delete the provisions of the Internal Revenue Code of 1954 which treat Members of Congress separately with respect to living expense deductions.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) section 162(a) of the Internal Revenue Code of 1954 (relating to trade or business expenses) is amended by striking out the last sentence.

(b) The amendments made by this section shall apply to taxable years beginning after December 31, 1982.

Senator PACKWOOD. The committee will come to order. Our first witness will be Robert Woodward, the Associate Tax Legislative Counsel. When Senator Specter arrives, we will put him on right after Mr. Woodward.

Mr. Woodward, please go ahead.

STATEMENT OF ROBERT WOODWARD, ASSOCIATE TAX LEGISLATIVE COUNSEL, DEPARTMENT OF THE TREASURY

Mr. WOODWARD. Thank you, Mr. Chairman. I am pleased to appear before you today on behalf of the Treasury Department to discuss the general treatment of expenses incurred by taxpayers traveling away from home on business and the special rules in this area applicable to State legislators and Members of Congress.

This discussion is intended to aid you in your consideration of S. 70, which deals with the deduction of travel expenses by Members of Congress. S. 70 would repeal the special rule enacted in 1952 which establishes as a Member's tax home the Member's place of residence within the State, congressional district or possession that the Member represents in Congress.

The bill also would repeal the $3,000 limit on the amount of the deduction for living expenses incurred by Members while away from their tax homes on business.

My written statement—and I will summarize it very briefly—is divided into three parts. First—the statement discusses the general rules for the deduction of expenses while traveling away from home on business. Next, the statement reviews the special rules applicable to State legislators. And finally, the statement discusses the special rules applicable to Members of Congress.

In general, a taxpayer may not deduct expenditures for personal, living or family expenses. However, the Internal Revenue Code provides an exception for ordinary and necessary expenses incurred while traveling away from home in pursuit of a trade or business. For this purpose, an individual is away from home only if he is traveling on business overnight or for a period sufficient to require sleep or rest. If a taxpayer is traveling away from home on business, his deductible expenses include expenditures for transportation, meals, and lodging, together with incidental expenses such as laundry.

Deductions for lodging expenses incurred away from home are appropriate to reflect a duplication or increased level of expense which the taxpayer would not incur in the absence of business necessity.

Similarly, deductions for meal expenses incurred away from home are appropriate to reflect the additional expense of eating outside the home which the taxpayer incurs for business reasons.

Because an individual may only deduct living expenses incurred while away from home, it is necessary to determine the location of the individual's tax home. Under the rules the Internal Revenue Service applies to taxpayers generally, an individual's tax home is his principal place of business. If an individual conducts his business at more than one location, his principal place of business is determined on the basis of facts and circumstances.

Generally, before a deduction for travel expenses may be claimed, a taxpayer must substantiate the amount of the expense, the time and place of travel and the business purpose of the expense. In general, a taxpayer must maintain an account book, diary, statement of expense or similar record, together with documentary evidence for expenditures of $25 or more.

Expenditures made for political purposes, including costs of campaigning and attending political conventions, are considered nondeductible personal expenses. This rule is applicable whether or not the campaign is successful and whether or not the campaign is for a new position or for reelection to a position previously held.

The next part of my statement deals with the special rules applicable to State legislators which were first enacted in 1976, then were amended in the Economic Recovery Tax Act of 1981. Those rules are set forth in some detail in my written statement, and therefore I will not outline them orally.

Finally, I will turn to the rules applicable to Members of Congress. Members of Congress, like other business travelers, are entitled to deduct ordinary and necessary travel expenses incurred in pursuit of their trade or business as a representative of their legislative districts.

One of the first issues to arise in connection with the deductibility of Members' travel expenses involved the location of a Member's tax home. In a 1936 decision the Board of Tax Appeals, the predecessor of our current Tax Court, held on the facts presented in that case that the tax home of one Member of Congress was the District of Columbia. Under this decision Members of Congress generally were not permitted to deduct any of their living expenses while at the Nation's Capital.

Subsequently, in 1952, Congress reversed this rule and amended the Internal Revenue Code to provide that a Member's tax home shall be his or her residence in the district he or she represents. The Senate report explained that the amendment was intended "to permit the Members of Congress to claim deductions for tax purposes to the same extent as other persons whose business or profession requires absence from home for varying periods of time."

In addition, allowable deductions for living expenses incurred by Members while away from their tax homes on business were limited to $3,000 per year. In 1981 Congress made three amendments to the rules affecting the tax treatment of living expenses of members in the Washington, D.C. area. I think that those 1981 amendments are very familiar to this subcommittee, and therefore I will not review them.

In 1982, as a part of the Urgent Supplemental Appropriations Act of 1982, Congress repealed two of the three 1981 amendments and in effect restored the law to its previous state, returning to the 1952 rules.

Under current law, the $3,000 cap on deductible expenses incurred by Members while away from their tax homes is still in effect, and the rule is that a member's tax home is his home district for purposes of the Code.

This concludes my prepared remarks, and I will be happy to respond to any questions that you may have.

[The statement of Mr. Woodward follows:]

For Release Upon Delivery
Expected at 8:30 a.m. EST
February 25, 1983

STATEMENT OF
ROBERT G. WOODWARD
ASSOCIATE TAX LEGISLATIVE COUNSEL
DEPARTMENT OF THE TREASURY
BEFORE THE
SUBCOMMITTEE ON TAXATION AND DEBT MANAGEMENT
OF THE SENATE COMMITTEE ON FINANCE

Mr. Chairman and Members of the Subcommittee:

I am pleased to appear before you today on behalf of the Treasury Department to discuss the general treatment of expenses incurred by taxpayers traveling away from home on business, and the special rules in this area applicable to State legislators and Members of Congress. This discussion is intended to aid you in your consideration of S. 70, which deals with the deduction of travel expenses by Members of Congress.

Description of S. 70

S. 70 would repeal the special rule enacted in 1952 which establishes as a Member's "tax home" the Member's place of residence within the State, Congressional district or possession that the Member represents in Congress. The bill also would repeal the $3,000 limit on the amount of the deduction for living expenses incurred by Members while away from their tax homes on business.

General Treatment of Expenses for Traveling Away From Home on Business

In general, a taxpayer may not deduct expenditures for personal, living, or family expenses. However, Internal Revenue Code section 162(a) provides an exception for ordinary and necessary expenses incurred while traveling away from home in pursuit of a trade or business. For this purpose, an individual is "away from home" only if he is traveling on business overnight or for a period sufficient to require sleep or rest.

If a taxpayer is traveling away from home on business, his deductible expenses include expenditures for transportation, meals, and lodging, together with incidental expenses such as laundry. Deductions for lodging expenses incurred away from home are appropriate to reflect a duplication or increased level of expense which the taxpayer would not incur in the absence of business necessity. Similarly, deductions for meal expenses incurred away from home are appropriate to reflect the additional expense of eating outside the home which the taxpayer incurs for business reasons.

Because an individual may only deduct living expenses incurred while away from home, it is necessary to determine the location of the individual's "tax home." Under the rules the Internal Revenue Service applies to taxpayers generally, an individual's tax home is his principal place of business.1/ If an individual conducts his business at more than one location, his principal place of business is determined on the basis of facts and circumstances. The most important considerations in making this determination are: the amount of time spent at each location; the amount of income derived at each location; and the degree of business activity at each location.

1/ At least one Circuit Court of Appeals, in deciding the locale of an individual's tax home, has framed the issue in terms of whether, based on all the facts, it would be reasonable for the taxpayer to live in the vicinity of where he is employed. See Six v. United States, 450 F.2d 66 (2d Cir. 1971). Although this approach rejects the IRS' "principal place of business" formulation, the results reached under either test would in most instances be the same.

Generally, before a deduction for travel expenses may be claimed, a taxpayer must substantiate the amount of the expense, the time and place of travel, and the business purpose of the expense. In general, the taxpayer must maintain an account book, diary, statement of expense, or similar record, together with documentary evidence, such as receipts or paid bills, for expenditures of $25 of more.

Expenditures made for political purposes, including costs of campaigning and attending political conventions, are considered nondeductible personal expenses. This rule is applicable whether or not the campaign is successful and whether or not the campaign is for a new position or for reelection to a position previously held.

State Legislators

Prior to 1976, the rules generally applicable to all taxpayers for deducting travel expenses were applied to State legislators. Most State legislators treated their residences as their tax homes for tax purposes and deducted their traveling expenses while at the State capital; however, the Internal Revenue Service often challenged these deductions. The tax home of each State legislator was thus determined on a case-by-case basis.

The tendency toward more frequent and lengthy State legislative sessions often made it unclear whether the legislator's tax home was the State capital or his home district. In some cases, the legislator's tax home would shift from year to year. This, in turn, caused recordkeeping difficulties for legislators as they tried to provide the required substantiation for travel expenses without knowing the location of their tax homes in advance.

In recognition of this problem, special temporary rules for State legislators were enacted as part of the Tax Reform Act of 1976. Under these rules, a State legislator could elect as his tax home his place of residence within the legislative district which he represented. He thus could claim deductions for transportation costs and living expenses incurred while away from his home district. The deductible living expenses could be claimed without substantiation. The amount was computed by multiplying the legislator's total number of "legislative days" for the year by the per diem

amount generally allowable to Federal employees for travel away from home. For this purpose, "legislative days" included (1) days in which the legislature was in session (including any day in which the legislature was not in session for 4 consecutive days or less, i.e., weekends) and (2) days on which the legislature was not in session but the legislator attended a meeting of a legislative committee.

Revenue Ruling 82-33, 1982-10 I.R.B. 4, holds that for purposes of these rules the "generally allowable" Federal per diem is the maximum Federal per diem authorized for the seat of the legislature. The Federal per diem travel allowance is $50 for most areas of the United States but is higher for certain high cost areas, including a number of State capitals.

In 1981 the temporary elective provisions for State legislators were modified and made permanent. The amendments increased the amount of the deduction allowed per day without substantiation to the greater of (i) the amount generally allowable to Federal employees in travel status or (ii) the amount generally allowable by the State to its employees for travel away from home, up to 110 percent of the appropriate Federal per diem.

A second amendment made in 1981 created a conclusive presumption that a legislator was away from home on business on each legislative day. This amendment reversed the decision of the Tax Court in Chappie v. Commissioner, 73 T.C. 823 (1980), which affirmed the Internal Revenue Service's position that a State legislator must comply with the normal rules requiring a taxpayer to be "away from home" in order to deduct living expenses.

The third amendment made in 1981 excluded from application of the elective provisions any State legislator whose place of residence within his legislative district is 50 or fewer miles from the State capitol building.

Members of Congress

Members of Congress, like other business travelers, are entitled to deduct ordinary and necessary travel expenses incurred in pursuit of their trade or business as a representative of their legislative districts. One of the first issues to arise in connection with the deductibility of a Member's travel expenses involved the location of a Member's tax home.

In a 1936 decision, the Board of Tax Appeals held on the facts presented that the "tax home" of one particular Member of Congress was the District of Columbia. Lindsay v. Commissioner, 34 B.T.A. 840 (1936). Under this decision, Members of Congress were generally not permitted to deduct any of their living expenses while at the nation's capital. Subsequently, in 1952, Congress reversed the rule in Lindsay and amended the predecessor of Code section 162 to provide that a Member's tax home shall be his or her residence in the district he or she represents. The Senate Report explained that the amendment was intended "to permit the Members of Congress to claim deductions for tax purposes to the same extent as other persons whose business or profession requires absence from 'home' for varying periods of time." S. Rept. 1828, 82d Cong., 2d Sess., reprinted in 1952-2 C.B. 374. In addition, allowable deductions for living expenses incurred by Members while away from their tax homes on business were limited to $3,000 per year.

In 1981 Congress made three amendments to the rules affecting the tax treatment of living expenses of Members in the Washington, D.C. area. First, the $3,000 cap on deductible expenses was eliminated. Second, section 280A of the Code was amended to provide an exception to the general rule which denies business expense deductions with respect to any dwelling unit used by a taxpayer or his family for personal purposes for more than 14 days a year. Under this amendment, the general rule does not apply in cases where the

residence is used by the taxpayer while away from home on business. Third, section 280A was further amended to direct the Treasury Department to prescribe amounts deductible, without substantiation, for a Member's living expenses while away from home in the District of Columbia area. Pursuant to this directive, Treasury promulgated regulations in January 1982 setting forth a series of rules which were patterned after the rules applicable to State legislators.

As part of the Urgent Supplemental Appropriations Act of 1982, Congress repealed two of the three 1981 amendments affecting the deductibility of living expenses by Members of Congress. The 1982 legislation restored the $3,000 cap on deductible living expenses incurred by Members of Congress while away from their tax homes on business. The legislation also repealed the special rule permitting Members to deduct designated amounts prescribed by Treasury regulations for living expenses without substantiation. The 1982 legislation did not affect the 1981 amendment to section 280A that provided an exception for deductions with respect to dwelling units used by taxpayers while away from home on business. The 1982 legislation is effective for taxable years beginning after December 31, 1981.

This concludes my prepared remarks. I will be happy to respond to any questions that you may have.

Senator PACKWOOD. I want to make sure that this will not change present law by which Members are taxed for purposes of State or local income.

Mr. WOODWARD. The bill before you would simply remove the special rule that designates as the tax home the State or district represented and would return to a facts-and-circumstances test which would make the outcome unclear in any given case. Each case would have to be resolved on its own facts as to where the particular Member's tax home was. So I think it is very difficult to draw a general rule as to what that tax home would be.

Senator PACKWOOD. Well, I want to make sure we are not changing something I do not think we intend to change. For a number of years, the State of Maryland attempted to levy an income tax on Members living in Maryland. That has subsequently been reversed by the Supreme Court.

This bill will not change that status for income tax purposes, will it?

Mr. WOODWARD. No, Mr. Chairman, it would have no impact on State or local taxation of Members. Except to the extent that some State or local statutes might incorporate a concept that is within the Federal statute, and that would be something that would have to be reviewed, I think, on a State-by-State basis.

Senator PACKWOOD. Let's back up to what the State of Maryland tried to do. They held all the Members of Congress living in the State of Maryland to be residents of Maryland for purposes of income tax. That was appealed and finally went to the Supreme Court. The Supreme Court ruled that Members of Congress are residents of the States that we represent for purposes of income taxation.

I want to make sure this bill does not undo that decision.

Mr. WOODWARD. Mr. Chairman, I am not really—I really do not know that I can answer that question one way or the other. I think that it would depend upon the basis for the decision, which I have not reviewed. And I think that that might be something that would be a matter that would need to be looked at carefully in connection with this legislation.

Senator LONG. Let me just answer that question for you if I may. The bill has nothing to do with State income taxes and would not cause Members of Congress to be subject to the District Columbia, Virginia, or Maryland income taxes.

Title IV, subsection 113 of the United States Code prohibits any State or political subdivision (including the District of Columbia), from treating a Member of Congress as a resident for purposes of State and local income tax unless the Member represents such State or district in such State.

In other words, if you are the Senator from Maryland, you definitely could be taxed by Maryland. If you are a Congressman from Maryland, you definitely can be taxed as a Congressman from that congressional district. And the same thing is true of Virginia. But the law prohibits those States from taxing a Senator from Oregon or a Senator from Louisiana as though he were a resident of those States for the purposes of their State income tax laws.

So, for purposes of State income tax law, by virtue of Federal law which has the power to preempt the States in that respect, you are going to be taxed according to the laws of the State that you represent. If you are a Senator or Congressman from that State, you will be taxed as a resident of that State. For purposes of Federal income tax law we simply say that we propose that you be taxed just as any other businessman would be taxed.

Now, in this case we are talking about transportation expenses incurred away from your principal post of duty. And in most instances, that will be something that is deductible where you are away from your principal post of duty, which is here.

But if a person maintains an office in his State and in addition maintains a home there and spends most of his time there, he may very well be in a position to deduct his expenses here rather than down there, but it would have to depend upon circumstances just as it would with any other businessman who had two places of business.

Mr. WOODWARD. That is correct, Senator Long.

Senator PACKWOOD. I have no other questions, Mr. Woodward. Thank you.

Senator LONG. Basically, all you are advocating is that we be taxed the same way everybody else is taxed, no better, no worse. Right?

Mr. WOODWARD. I do not think that I advocated that, Senator. [Laughter.]

Senator PACKWOOD. He is saying that is what the bill does. I am not sure the Treasury has a position on the bill.

Senator LONG. Oh, I see. Thank you very much.

Senator PACKWOOD. Did I state that correctly? You have explained the bill, but the Treasury does not necessarily take a position?

Mr. WOODWARD. Yes, Mr. Chairman.

Senator LONG. I am sorry for you people down there in Treasury. I think just once in a while we ought to make the Treasury stand on principle. [Laughter.]

Senator PACKWOOD. Is Senator Specter here yet?

Senator LONG. I have a statement, Mr. Chairman.

Senator PACKWOOD. Russell, go ahead.

Senator LONG. I think I will take the witness chair to make this statement.

Senator PACKWOOD. Mr. Woodward, thank you very much for being here. We appreciate it.

Senator Long, who has for a long period of time been one of the principal sponsors of this approach, please proceed.

Senator LONG. Mr. Chairman, thank you for calling up S. 70. And thank you for appearing at an early hour to conduct this hearing. I know the committee is going to have another hearing following this one.

Senator PACKWOOD. I do not think all of these cameras are for us. [Laughter.]

Senator LONG. I rather suspected that was the case. [Laughter.] This is a bill to eliminate from the Internal Revenue Code all special provisions relating to deductions claimed by Members of Congress. The legislation would permit Members to be subject to the same tax rules that govern all other taxpayers.

The bill would eliminate the irrebuttable presumption in the Internal Revenue Code that a Member's principal place of business for Federal tax purposes is located in the State or district he or she represents. Under this statutory fiction, a Member of Congress is considered to be away from home for tax purposes when he is in Washington, even if Washington is where he does most of his work and spends most of his time.

This entitles him to deduct up to $3,000 in Washington expenses on the theory that the Washington expenses are for business travel. There is no businessman in the country who gets to deduct the cost of living at home within commuting distance of the office where he does most of his work.

The only reason that Members of Congress can deduct this type of personal living expense is because of this special Members-only rule. That is wrong, and it should be corrected.

This bill would have no effect on a Member's legal residence for purposes of State income taxes, voter registration or similar questions. It would simply mean that Members of Congress would be governed by the rules applicable to other taxpayers whose jobs require a division of time between two distant locations.

Under these rules, a taxpayer may not deduct expenses for living near his principal post of duty or principal place of business. On the other hand, a taxpayer may deduct all reasonable business expenses for travel, meals, lodging incurred while the taxpayer is away from his principal post of duty or principal place of business.

I should point out that a taxpayer can have only one principal place of business for Federal tax purposes. This was an issue in the late forties and early fifties and the concern then was that a Member of Congress might be treated as having two principal places of business and thus be denied any deductions for traveling

expenses. This was at least part of the reason Congress chose to specify a Member's State or district as his only principal place of business.

Today, however, the law is clear that a taxpayer cannot have two such places at the same time. The location of the principal place of business of a Member of Congress would be determined by all the facts and circumstances. Without prejudging the question for all Members, I would suppose that Washington would be seen as a principal post of duty or place of business for many Members of Congress even though their legal domicile would be elsewhere.

If Washington is treated as a Member's principal post of duty, then his expenses for personal meals and a personal home in Washington would not be allowed. His expenses for travel away from Washington in connection with his job would be deductible as business expenses without any dollar cap, but subject to the general rule that only reasonable expenses are deductible.

The heart of this proposal is the elimination of special references in the tax law to the deductions of Members of Congress. It would not permit Members of Congress to receive better treatment or to suffer worse treatment than taxpayers at large. It simply provides equal treatment.

Now, Mr. Chairman, contrary to what some people think, this is not a penalty on all Members of Congress. Some Members will get better tax treatment than they are getting now; others will get worse tax treatment. They will be treated like all other citizens. And I do not know anything, Mr. Chairman, that has tended to cause the Congress to be held up to opprobrium and scorn more than this type of thing where the Congress seeks and demands for itself special treatment that is not available to other citizens. And that is what the bill seeks to eliminate.

[The statement of Senator Long follows:]

STATEMENT OF SENATOR LONG

Mr. Chairman, thank you for calling a hearing on S. 70, a bill which will eliminate from the Internal Revenue Code all special provisions relating to deductions claimed by Members of Congress. This legislation will permit Members to be subject to the same tax rules that govern all other taxpayers.

The bill would eliminate the irrebuttable presumption in the Internal Revenue Code that a Member's principal place of business for Federal tax purposes is located in the State or district he or she represents. Under this statutory fiction, a Member of Congress is considered to be away from home for tax purposes when he is in Washington, even if Washington is where he does most of his work and spends most of his time. This entitles him to deduct up to $3,000 in Washington expenses on the theory that the Washington expenses are for business travel. There is no businessman in the country who gets to deduct the cost of living at home, within commuting distance of the office where he does most of his work. The only reason that Members of Congress can deduct this type of personal living expense is because of this special Members-only rule. That is wrong, and it should be corrected.

This bill would have no effect on a Member's legal residence for purposes of State income taxes, voter registration or other similar questions. It would simply mean that Members of Congress would be governed by the rules applicable to other taxpayers whose jobs require a division of time between two distant locations. Under these rules, a taxpayer may not deduct expenses for living near his principal post of duty or principal place of business. On the other hand, a taxpayer may deduct all reasonable business expenses for travel, meals and lodging incurred while the taxpayer is away from his principal post of duty.

I should point out that a taxpayer can have only one principal place of business for Federal tax purposes. This was an issue in the late 1940s and early 1950s, and the concern then was that a Member of Congress might be treated as having two

principal places of business, and thus be denied any deductions for traveling expenses. This concern was at least part of the reason the Congress chose to specify a Member's State or district as his only principal place of business. Today, however, the law is clear that a taxpayer cannot have two such places at the same time.

The location of the principal place of business of a Member of Congress would be determined by all the facts and circumstances. Without prejudging the question for all Members, I would suppose that Washington would be seen as the principal post of duty or place of business for many Members of Congress—even though their legal domicile would be elsewhere. If Washington is treated as a Member's principal post of duty, then his expenses for personal meals and a personal home in the Washington area would not be allowed. His expenses for job-related travel away from Washington would be deductible business expenses, without any dollar cap but subject to the general rule that only reasonable expenses are deductible.

The heart of this proposal is the elimination of special references in the tax law to the deductions of Members of Congress. It would not permit Members of Congress to receive better treatment or to suffer worse treatment than taxpayers at large. It simply provides equal treatment.

FACT SHEET ON S. 70—A BILL TO ELIMINATE SPECIAL TAX TREATMENT OF MEMBERS OF CONGRESS

1. Effect of Legislation on Internal Revenue Code.—The bill would remove from the Code all references to Members' deductions. Specifically, it would delete the special rule in section 162(a)(2) of the Code, providing that the principal place of business of a Member, for purposes of travel deductions, is always in the State or district he represents. (For purposes of "away from home" travel deductions, the IRS and the courts treat a taxpayer's principal post of duty or principal place of business as his "tax home", even if he has his personal residence in a different place.) The bill would also delete the $3,000 cap on Members' deductions for "away from home" travel expenses.

2. Effect of Legislation on Members' Expense Deductions:

(a) Same treatment as other taxpayers.—If S. 70 is enacted, Members will be treated exactly like other taxpayers whose jobs require a division of time between two distant locations. Under these rules, a taxpayer may not deduct expenses for living near his principal place of business. On the other hand, a taxpayer may deduct all reasonable expenses for travel, meals and lodging incurred while the taxpayer is traveling away from his principal place of business.

(b) Meaning of "principal place of business".—A person can have only one principal place of business at a time. In determining which of several places of business is a taxpayer's principal place of business, the IRS applies the following factors, with heavy emphasis on the first factor: (i) Length of time spent in each place; (ii) Degree of business activity in each place; and (iii) Relative proportion of income derived from each place.

(c) Allowable deductions.—If the application of the foregoing factors to a particular Member indicated that he had his principal place of business in Washington, he would not be entitled to deduct his expenses for living in the Washington area. However, he would be able to deduct, as business travel expenses, all appropriately documented, unreimbursed, reasonable expenses for travel, meals and lodging incurred when traveling away from Washington on business, including trips back to his district or State. In particular, he could deduct the following types of items to the extent attributable to his use: (i) Depreciation on his residence in his State or district, or rent on a rented home; (ii) Maintenance, utilities and insurance on such home; (iii) Depreciation of the furnishings in such home; (iv) Cost of meals in his State or district; (v) Automobile and other travel expenses in his State or district; and (vi) Laundry expenses in his State or district.

(d) Authority.—The foregoing discussion is drawn from cases and ruling including Revenue Ruling 75-432, 1975-2 C.B. 60; Revenue Ruling 55-604, 1955-2 C.B. 49; *Markey v. Commissioner,* 490 F.2d 1249 (6th Cir., 1974); and IRS Letter Ruling 8120124, February 23, 1981.

3. No Effect on Local Income Taxation by District of Columbia, Virginia or Maryland.—The bill has nothing to do with State income taxes and would not cause Members to be subject to D.C., Virginia or Maryland income taxes. Title 4, Section 113 of the U.S. Code prohibits any State or political subdivision (including the District of Columbia) from treating a Member of Congress as a resident for purposes of State and local income taxes, unless the Member represents such State or a district in such State.

Senator PACKWOOD. I could not agree with you more, and again I want to congratulate both you and Senator Specter for taking the lead on this. I hope we pass it once and for all and get it behind us and go on to some of the major issues this Nation faces. We have spent more time on this issue than I think we have spent on Mainland China.

Senator LONG. Well, while you are here, Mr. Chairman, in that connection might I just direct your attention to my little proposed constitutional amendment that is sitting out there at the desk, or somewhere kicking around in one of the committees, on another subject that is taking up more time than Mainland China? That is the matter about our own pay.

I propose a constitutional amendment, and Howard Baker has joined me in cosponsoring it, to suggest that we not have anything to say about our own salary.

Senator PACKWOOD. I would assume that is before the Judiciary Committee, is it not?

Senator LONG. Yes, I believe it would be. But you are a very influential Senator, and you are chairman of a major committee, the Commerce Committee, as well as being chairman of this subcommittee. And you have more than one vote. And I know that whether you do or not. [Laughter.]

And your views are very important.

I am saying that nobody else gets to fix his own salary. We ought to have a commission fix salaries so that we would eliminate that conflict of interest, because it holds us again up to scorn. Everybody is inclined to presume that whatever we do, we have got to be giving ourselves the best of it, when in fact we are probably leaning over backward the other way. Thank you, Mr. Chairman.

Senator PACKWOOD. Thank you, Senator Long.

Senator Specter.

STATEMENT OF HON. ARLEN SPECTER, A U.S. SENATOR FROM THE STATE OF PENNSYLVANIA

Senator SPECTER. Thank you, Mr. Chairman.

Senator PACKWOOD. The personal note and the money that was passed to Senator Specter was for our squash game. I did not have any money when we finished playing. [Laughter.]

Senator SPECTER. Mr. Chairman, I have an unalterable rule of never accepting cash under any circumstances, especially in public. [Laughter.]

Even if it was only $6.

I regret my slight tardiness, but I was engaged in a very important matter this morning which went into overtime. [Laughter.]

That was a squash game with Senator Packwood.

Mr. Chairman, thank you for the opportunity to testify on the issue of deductibility of a Member of Congress' living expenses. Before this committee is legislation introduced by the distinguished Senator from Louisiana, Senator Long, and cosponsored by Senator Proxmire and myself, which will provide Members of Congress with the same treatment as other taxpayers.

I urge bipartisan sponsorship of and committee action on this legislation which would place Congressmen in an identical position with other taxpayers on away-from-home deductions.

On January 26, 1983, Senator Long introduced S. 70, directed to the same purpose as S. 2413, which he introduced in April 1982, and was cosponsored by Senators Bentsen, Moynihan, Durenberger, Grassley, Cannon, Proxmire, Nunn, and Cochran.

This bill would eliminate from the Internal Revenue Code all specific provisions relating to deductions for Members of Congress and would treat Congressmen just like every other citizen, no better and no worse.

If Members incur necessary expenses which are legal and can be itemized and deducted, it is only fair that they be allowed to do so like any other citizen. The current law unfairly favors Congressmen and unfairly disadvantages others for a Congressman who resides close to Washington, D.C. He or she may be receiving preferential treatment with an automatic $3,000 deduction when other taxpayers would be entitled to deduct only itemized business deductions away from home.

Conversely, many Congressmen are disadvantaged where other taxpayers could properly deduct ordinary and necessary business expenses away from home under identical circumstances without the $3,000 limitation.

Last year S. 2413 received widespread editorial and citizen support. The Washington Post on May 21, 1982, editorialized in favor of S. 2413 by saying:

> Eliminating the presumption of residence, as Senator Long proposes, would mean that the IRS would apply the same test to a Member of Congress that it applies to an ordinary businessman in determining when he is at home and when he is away on business, the amount of time spent at each place, the location, family and so on.

The New York Times on July 2, referring to Senator Long, said:

> He introduced a sensible bill that would treat Senators and Representatives just like everyone else when it comes to expense accounting.

An editorial by Pittsburgh KDKA Radio succinctly summarized the issue on May 12, 1982:

> The larger question is whether Congress deserves a bigger deduction than the $3,000 a year permitted since the 1950s. We say it does. Things are more expensive now. Furthermore, business people can deduct expenses. So should elected officials who incidentally have to maintain households in one of America's most expensive cities in addition to one in their own hometowns.

In hearings before the Finance Committee, testimony in support of S. 2413 was offered by Mr. Fred Wertheimer, president of Common Cause, who said, "We support this legislation as the correct long-term solution to the problems that now exist." That appears on page 134.

Public Citizens Congress Watch, a public interest advocacy group founded by Mr. Ralph Nader, supported this measure in testimony offered by Mr. J. Angoff, who said, "In short, S. 2413 would provide equal treatment for Members of Congress by repealing the Member's only tax home rule and the authority for a $75 a day regulation. We urge this committee to support it." That appears at page 151.

Similarly, the National Taxpayers Union, in a statement by its chairman, Mr. James Dale Davidson, supported S. 2413 at page 141 of the record.

I ask my colleagues to consider this inequity, and it is my hope that they will see the merits of the legislation sponsored by Senator Long and cosponsored at this time by Senator Proxmire and myself.

Mr. Chairman, I thank you very much.

Senator PACKWOOD. Thank you, Senator Specter.

Senator Long.

Senator LONG. Let me just thank you for your part in this, Senator Specter. I had become discouraged about this matter because I offered this amendment on the big tax bill last year, and people who I expected to support it, such as Senator Armstrong, announced that, while they were for the amendment, they did not think it ought to be added as an amendment to that bill. They therefore voted against it.

Generally speaking, when people say that, I just take it with a grain of salt. I figure that they are really against the bill and are just not coming clean with you. In fact, that is what it usually does mean.

The fact that I heard no more indication of support from members within this committee caused me to become rather discouraged about the matter, and eventually we went back to the $3,000 rule. So the mischief that we had was not as much mischief as it had been before. When I say the mischief we had before I am talking about the deal where you can deduct an automatic $19,000. Then you came and saw me about it, and you urged me to push the amendment.

I had to indicate to you, OK, if you wanted me to do it, I would. It was because you came to see me about the matter that I decided I would go ahead and pick up the cudgel and go ahead again. And I hope we can pass this.

It just happens to be right, that is all. I do not know why in the world we fellows up here, seeking as we do to project a good image, cannot do business that way. If it is right, we ought to do it; if it is not right, we should not do it.

Senator SPECTER. Well, the matter has been subjected to a tremendous amount of confusion and misinterpretation. It has come up many times last year. And Senator Mattingly and I introduced a bill which was similar to yours but did not have the added measure in your bill, which I think is preferable which leaves the determination of tax residence to all the circumstances. The bill which Senator Mattingly and I introduced differed from that.

And when you referred to Senator Armstrong, we had an extended debate I think in the wee hours of the morning one day on the continuing resolution last year where Senator Armstrong wanted Congressmen treated like everybody else. So that the measure which you have proposed, which has come after a lot of consideration and a lot of evolution—and there have been a great many ideas on this matter, but it was your bill which brought it all together—to eliminate every factor which distinguishes a Congressman from any other taxpayer.

And that is as it should be. And that is why it seemed to me that the bill you had was the one which ought to move forward and why I was pleased to join with Senator Proxmire on supporting you on it.

Senator LONG. Thank you.

Senator PACKWOOD. Senator Specter, thank you very much.

Senator SPECTER. Thank you.

Senator PACKWOOD. We will conclude with our panel, Mr. James Dale Davidson, chairman of the National Taxpayers Union, and Mr. Jay Angoff, staff attorney, Public Citizens Congress Watch.

Good morning, gentlemen. Mr. Davidson, why don't you go first?

STATEMENT Of JAMES DALE DAVIDSON, CHAIRMAN, NATIONAL TAXPAYERS UNION, WASHINGTON, D.C.

Mr. DAVIDSON. Thank you, Senator. I want to reiterate the testimony that I gave in support of Senator Long's bill the last time. I think it is a good solid move, and as the Senator said very eloquently a moment ago, it is very difficult for ordinary citizens to feel that Members of Congress should be a caste separate and above the ordinary citizen in tax treatment.

I would ask that my statement be included in the record in full. And I would like at this point to make a rather extemporaneous and friendly suggestion in terms of an amendment. I think it would serve the purposes that Senator Long is trying to achieve and also meet a problem which I think we might want to be concerned about. While it is true that Members of Congress are ordinary citizens and they should be treated equally under the law, it is also true that you have important duties in terms of making and setting the agenda for the public.

I think that we ought to be somewhat wary of giving the Internal Revenue Service the same kinds of discretionary powers over Members of Congress that it has over every other businessman.

Now, we do feel, and we have said many times that the IRS has too much discretion over ordinary citizens. This gives a tremendous amount of power to the Internal Revenue that, say, the CIA does not have. There is not a newspaper in the country that would feel the least bit of inhibition about running a front-page story saying that the CIA is in love with a giraffe, but they would not do the same thing for the Internal Revenue, because they do not want the Internal Revenue to audit their books.

What I was going to suggest is that in terms of having the residence of the Member of Congress established by the facts and circumstances, that what we might want to suggest is that in the beginning of each term the Member would send to the Internal Revenue his statement of facts and circumstances, saying that I intend to spend 60 percent of my time sleeping in Indiana, let us say, and I would like a ruling from you as to whether this would constitute my tax home.

And if the ruling came forth and it was, yes, indeed, this would constitute the tax home and that Member of Congress thereafter met the requirements that he had stipulated, this would be unimpeachable as proof that he was a resident of Indiana. That way we would not have a situation which might recur in the future as we

had with the Nixon administration. For example, where some Member of Congress had not gone along with something or other and had been living in Indiana, he might suddenly discover that the IRS was saying, OK, this is going to cost you another $2,000 or $3,000 if you do not vote our way.

Now, I am not saying that this is going to happen and it is that clearcut. But I do not think we would hurt the very solid intention that Senator Long is reaching for by establishing some sort of procedure which would take away some of the discretion that the Internal Revenue would have by making them rule in advance over the set of facts and circumstances that would determine the tax residence.

So, that would be my suggestion. But in general, I am very enthusiastic about Senator Long's work.

Senator LONG. Could I just make this suggestion? You see, I am advised that if we do what you are asking about, that would be subject to the Freedom of Information Act, and I do not want to ask any special favors as far as Members of Congress are concerned with respect to the Freedom of Information Act.

Ordinarily, a taxpayer is entitled to privacy of his tax returns, and I think that the Senator and a House Member has a right to expect the same consideration in that regard as other citizens. I think you agree with that.

Mr. DAVIDSON. I do agree with you.

Senator LONG. I very much dislike asking a special advantage for Members of Congress where the Freedom of Information Act is concerned. Maybe we could handle the matter by simply saying that a Member of Congress would be presumed to spend most of his time in the Washington area unless he submitted information or just made an inquiry to the contrary.

Mr. DAVIDSON. It is not really a grave problem, but I think we should be aware of the potential for abuse that might exist sometime in the future if we had a vindictive President and there was a situation where some votes could be swayed at the margin because somebody was at the margin in terms of the facts and circumstances of his residence.

I would just hope that we could establish some kind of more or less objective criteria that would either be published or which would be open to determination in advance so that there would not be this realm of discretion for the IRS.

But getting back to the main point of your bill, I think that this is something that most American citizens overwhelmingly support. I am glad to see that this hearing indicates that this piece of legislation is moving forward, as it should do, in my estimation.

I think there is another point here, which I touch in my written testimony, which I think is really behind a lot of the concern that people feel about the tax treatment of Members of Congress. And that is, there is a very large enduring sentiment among the public that the Members of Congress should not be grabbing for additional pay raises at a time when the ordinary citizen has a stagnant income or he has a declining income. There is a feeling that the Members do not want to vote themselves a straightforward pay increase. So they are going to fiddle, do what we had last year, pass a

tax break, which was repealed, to achieve the same effect as an increase in income.

While this is beyond the scope of this hearing, my suggestion, which I made in my last testimony on this issue, is that we could again establish some criterion where Members of Congress would get a pay increase that would be automatic but it would be based upon the growth of income in the economy. In other words, if real income rises, net of taxes and inflation, let us have an automatic increase for Members of Congress.

And that would be the equivalent to what happens with a corporation where the people who are the directors and executives of the corporation get a bonus if the corporation performs well but they do not expect to get this if the corporation performs badly.

The analogy could be stretched. But I think that Members of Congress reaching for pay increases when everybody else is suffering are not going to be in popular light. On the other hand, if we had a situation where we had a balanced budget, the growth of the economy was solid, income was rising, and taxes had not gone up as a share of national income, then I think most people would applaud that type of performance by Congress and would be glad to allow the Members of Congress to increase their pay.

So those are my opinions. Again, thank you, Senator Long, for this very encouraging piece of legislation.

[The prepared statement of Mr. Davidson follows:]

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Statement of James Dale Davidson

Chairman, National Taxpayers Union

before the

Subcommittee on Taxation and Debt Management

Committee on Finance

United States Senate

February 25, 1983

Mr. Chairman and members of the Committee, thank you for the opportunity to appear on behalf of the members of the National Taxpayers Union on legislation affecting the tax treatment of Congressmen's away-from-home expenses.

We support S. 70 by Senators Russell Long, William Proxmire and Arlen Specter. This bill would eliminate special tax treatment by members of Congress and truly place members of Congress on the same footing as the average taxpayer.

Current law says that Congressmen can claim their home state or district as their tax home, rather than their principle place of business. Members are allowed to deduct up to $3,000 of Washington expenses. In 1981, Congress lifted this cap, but public outcry forced the cap to be reinstated. The cap prevents abuse of this special provision.

Most importantly, this special provision frees Congressmen from proving where their tax home is, something that many taxpayers find an irksome part of our nation's tax laws. Because many members of Congress actually live in the Washington area, this provision allows members to deduct $3,000 of personal living expenses. This is a practice that the IRS frowns on when the average taxpayer attempts it.

Other members of Congress have proposed legislation which would repeal the $3,000 and simply require that members of Congress substantiate Washington expenses. They claim that this would place members on the same footing as average citizens. This is simply not true. Unless members are required to comply with IRS rules on establishing a principle place of business,

this approach will still allow members to deduct personal living expenses. No other taxpayer can do that.

Senator Long's bill would go the crucial final step by requiring that the IRS apply the same test to members as it does to ordinary citizens in establishing a person's tax home. If a member could prove that his tax home is in the district or home state, then Washington expenses would be deductible. Likewise, if a member proves that his principle place of business is in the Washington, D.C. area, all reasonable nonreimbursed expenses incurred while traveling back to the home state or district would be deductible.

There is one other provision of the tax law which continues to give members of Congress special treatment. Members of Congress pay no Social Security tax on their federal salaries. The vast majority of American taxpayers do not have the option of escaping the Social Security tax. We are aware that some members of Congress may actually pay less Social Security tax if such a law is enacted. This is because those members who are also self-employed pay a Social Security tax rate which is higher than the rate paid as an employee. Nevertheless, requiring all members of Congress to pay Social Security tax would place them on the same tax footing as the typical taxpayer. It would serve as a good complement to Senator Long's bill.

Although this is outside the jurisdiction of the Committee, I would like to briefly comment on congressional pay raises. One reason, in my opinion, for the continuous public outcry against pay increases for Congress has been the way Congress has gone about it. Members of Congress are theoretically eligible

for automatic pay increases each year. Of course, usually a member of the House or Senate is able to pass an amendment to prevent this from occurring. I feel the American public does not like the idea that there has to be a positive legislative effort made to stop these automatic salary increases. In the 1970s, the fiscal environment has continuously been one of declining disposable income and ever larger federal budget deficits. It is not surprising, therefore, that citizens become angry at automatic congressional pay increases.

I think it would be better to base congressional pay on the performance of the economy and/or the size of the federal budget deficit. If inflation was low, real income was increasing, unemployment was at much lower levels, and the federal budget became balanced, I believe that most Americans would agree to a congressional pay increase.

Congressional pensions are also another source of aggravation for the American taxpayer. Pension benefits greatly exceed the contributions made by Congressmen. Congressional retirees receive pension increases that equal the increase in the consumer price index. Many members are potential recipients of well over half a million dollars in federal pension benefits alone, and it's not uncommon for a member to be a federal pension millionaire. At the same time, many of our nation's elderly are on fixed incomes and American workers' wages have been lagging behind the consumer price index.

Finally, Congress should follow the principle of a constitutional amendment offered by James Madison. Although it was never enacted, it read "no law varying the compensation for services of senators or representatives shall take effect until an election of representatives shall have intervened."

In conclusion, S. 70 is worthwhile and deserves the support of Congress. The only change that we suggest is requiring members of Congress to pay Social Security taxes.

Senator PACKWOOD. Senator Specter, do you have any questions?

Senator SPECTER. No, thank you, Mr. Chairman.

But I would make one short comment, Senator Packwood, and that is that I would agree with Senator Long on the issue of not having anything different for Congressmen than other taxpayers. I think it is an interesting suggestion that you made, and I appreciate it. But anytime we deviate one whit on a difference, I think we open the door to why should there be special treatment for Congressmen. So that I think we ought to be exactly the same as anyone else, with respect to the Freedom of Information Act, anything.

Senator PACKWOOD. Mr. Angoff before you testify, let me thank you again for the statement you made on my behalf this summer when I was attacked on my consumer record. For the record, somebody made a statement about me, and seldom is my record distorted, but in this case it was. I was overseas at the time and Mr. Angoff, made a statement in rebuttal correcting the situation. I appreciate it very much.

Mr. ANGOFF. Thank you, Mr. Chairman.

Senator LONG. I might just ask about your suggested amendment. It occurs to me that we might arrange to have Members of Congress simply direct, by way of the staff of the Joint Committee on Taxation, a series of hypothetical situations to the Internal Revenue Service based on inquiries by Members of Congress. The Service could then simply answer those questions, stating a series of situations that this person lived in his district a certain number of days, he was in Washington a certain number of days, he was at certain other places a certain number of days, spelling out the essential facts, with the service stating where his principal residence would be for Federal income tax purposes under each hypothetical situation.

That having been done, I think each Member of Congress could say, all right, I submitted my situation to the IRS and got a ruling before I filed my return in April.

Mr. DAVIDSON. I think that would meet the type of concern which I had, which is not an unfriendly concern to your bill at all. I fear the abuse of power, and I think that your suggestion would answer my fear in this case.

Senator LONG. Thank you.

Senator PACKWOOD. Mr. Angoff.

STATEMENT OF JAY ANGOFF, STAFF ATTORNEY, PUBLIC CITIZEN'S CONGRESS WATCH

Mr. ANGOFF. Mr. Chairman, I will be brief. The law now is back to the way it was before the uproar of the last 2 years. By statute a Member's tax home is in his district. He can deduct up to $3,000 of living expenses in Washington, D.C. It is reasonable to argue that we should let sleeping dogs lie and we would not oppose keeping the law the way it is today.

Much of the incentive for changing the law has gone. The $3,000 limit was imposed in 1952. Clearly, $3,000 in 1982 is not worth as much as $3,000 was in 1952. Clearly, there was a reasonable argument to be made for in some way allowing Members to make more

money. This has been done, and the Members of the House had their salary raised, and of course, the honoraria limit has been completely lifted for Members of the Senate.

So we think much of the incentive for changing the law is gone. On the other hand, Senator Long, as you said, S. 70 is right in that it changes the existing law to treat Members of Congress exactly like members of the public; that is, their tax home is determined by the IRS, and it would be determined according to the three factors where a person lives—I am sorry—where he spends his time, where he makes his money, where he does his business.

So we would also support this. If Congress wished to change the law, we would support S. 70.

On the other hand, we think that much of the incentive for changing the law is gone. It is not what it was last year. Thank you very much.

Senator LONG. Well, let me make just one point if I might, Mr. Chairman.

Senator PACKWOOD. Could I say first, Common Cause wanted to testify in favor of this bill and could not be here today. But we will keep the record open and let them put a statement in.

Senator LONG. Let me just say that, if you will go back and get the history from 1950—I was there when it happened—this $3,000 provision was criticized at that time. You just go back and see what the media said about it when it happened. You know $3,000 then would be like about $10,000 now. The media at that time said that was wrong.

And some Senator, I believe John Williams, got up and made a speech against it and said it is wrong to do that, that it was an irrebuttable presumption clearly contrary to fact. When the Congress did it, if you had been here at the time, you would have been up here screaming about it that was wrong, just like you did about the $19,000 deal when Congress did that a year or two ago.

Recalling what the history was, when I hear you say, well, bringing back the $3,000 provision straightens it out, it seems to me we ought to straighten it out the way it should have been from the beginning, rather than go back to something that was criticized as being special treatment at the time that was done.

Mr. ANGOFF. Senator, I agree. We support S. 70. And I agree with you that is the right thing to do. My only point is that a lot of the incentive that there was last year is off.

Senator LONG. It is wrong, but it is not as big a wrong as it was when the other thing was done, is that it?

[Laughter.]

Senator LONG. Thank you.

Senator PACKWOOD. Arlen, any questions?

Senator SPECTER. No, Mr. Chairman.

Senator PACKWOOD. Gentlemen, thank you very much for coming. We appreciate it.

That will conclude this hearing. The full committee will meet at 10 a.m. today.

[Whereupon, at 9.10 a.m., the subcommittee was recessed.]

[By direction of the chairman the following communications were made a part of the hearing record:]

common cause
2030 M STREET, N.W., WASHINGTON, D. C. 20036 (202) 833-1200

Archibald Cox
Chairman

Fred Wertheimer
President

John W. Gardner
Founding Chairman

10 March 1983

The Honorable Robert Packwood
Chairman
Subcommittee on Taxation and Debit Management
United States Senate
221 Dirksen Senate Office Building
Washington D.C. 20510

Dear Senator Packwood:

Common Cause would like to submit this letter and the attached statement in the record of the hearing of 25 February 1983 in support of S. 70, legislation affecting the tax treatment of away-from-home expenses of Members of Congress. Like S. 2413 of the 97th Congress, in support of which the attached statement was first presented, S. 70 would repeal the statutory rule that a Member's residence in his home state or district is his tax home.

Common Cause believes the Congress acted responsibly last year in repealing the extravagant and preferential tax provision adopted for Members in 1981. That kind of favored treatment for Members of Congress was clearly wrong and was properly set aside.

The special 1954 provision in the tax law that automatically established a Member's principal place of business for tax purposes as the state or district that the Member represents remains, however, in force. S. 70 would remove the $3,000 cap on deductions and would also remove the special definition for a Member's principal place of business. It should result in Members of Congress being treated the same as all other taxpayers.

It is essential that the Subcommittee make it clear that no deduction should be allowed for expenditures made for political campaigning or other political purposes. Deductions allowed for Members under the legislation should be applied only to unreimbursed legitimate business expenses -- the away-from-home business expenses associated with a Member's official duties as a Member of Congress.

The failure of Congress over the years to deal responsibly with the issue of pay increases has had a detrimental effect on

on government. The Senate's refusal last year to accept a pay raise for itself and instead rely on honoraria from special interest groups to supplement official salary is highly detrimental to the goal of dealing with compensation for public officials in a fair and straightforward manner.

The need for appropriate pay levels for public officials cannot justify enacting unfair measures that turn Members of Congress into a privileged class. The Congress correctly repealed the 1981 tax break. We believe it is now appropriate to enact S. 70 with the qualifications outlined above.

Sincerely,

Fred Wertheimer
President

Attachment

TESTIMONY OF

FRED WERTHEIMER

PRESIDENT

COMMON CAUSE

on

PROPOSED LEGISLATION ON

TAX DEDUCTION FOR MEMBERS OF CONGRESS

before the

SENATE COMMITTEE ON FINANCE

SUBCOMMITTEE ON TAXATION AND DEBT MANAGEMENT

Friday, 18 June 1982

I want to express the appreciation of Common Cause for the opportunity to present our views today as this Subcommittee looks for a way to deal with what has become a major controversy in this country -- the deductibility of business-related travel expenses for Members of Congress.

The national public outcry that has occurred in response to the tax break Members voted themselves last year is rooted in the public's objection to Members of Congress creating special tax rules that benefit them and are not available to any other taxpayers. This kind of favored treatment for Members of Congress is wrong. It has been correctly recognized by the public as unfair, unjust and inequitable. Any ultimate solution for dealing with the public's legitimate concerns must be designed to assure that Members are not receiving preferred tax treatment over other taxpayers.

In 1954 Congress enacted legislation which established each Member's home state or congressional district as the Member's home for tax purposes. It is this special provision, combined with the lifting of the $3,000 cap on tax deductions for business-related travel expenses by Members, and the requirement for an automatic per diem tax deduction for Members, that generated the public uproar that has taken place.

At a time of national austerity when tens of millions of Americans were suffering economic hardships, Members of Congress

substantially reduced their own taxes by providing themselves with special tax treatment. This action has been correctly viewed throughout the country as a uniquely unfair windfall for Members of Congress.

Common Cause recognizes the need and importance of providing reasonable and appropriate salary increases for Members of Congress, as well as for other government officials. It is essential, in our view, that those in public office be adequately paid for the jobs they are performing. We have publicly supported salary increases in the past for all three branches of government, including the raises enacted in 1977 and 1979. We will continue to support appropriate pay raises in the future.

The need for appropriate salaries for public officials, however, is not and cannot be a justification for enacting unfair tax breaks that turn Members of Congress into a privileged class as compared with other taxpayers.

There are many taxpayers in this country today who, like Members of Congress, conduct business activities in two different locations. Living expenses associated with these business activities can only be deducted, normally, if those expenses are incurred while the taxpayer is away from home. "Home" is defined for tax purposes as the place where the taxpayer has his or her principal place of business. This means, in effect, that the normal daily costs of living at home with a family do not become eligible for treatment as a deductible business expense.

The special provision in the tax law for Members, however, automatically established a Member's principal place of business for tax purposes as the state or congressional district that the Member represents, regardless of where the Member actually spends his or her principal time conducting business and regardless of where the Member actually lives most of the time. This means that Members of Congress -- and Members of Congress only -- are eligible to take as business deductions what are actually the normal everyday costs of living at home.

The legislation introduced by Senator Russell Long, S. 2413, would repeal the special tax advantage that this unique definition of "principal place of business" provides for Members of Congress. We support this legislation as the correct long-term solution to the problems that now exist. We believe, however, that certain definitional and administrative questions must be addressed if S. 2413 is to appropriately achieve its goals.

Before addressing the substance of this and other proposals, however, we would like to congratulate this Subcommittee for holding public hearings on this matter.

The method by which the tax changes for Members were dealt with last year -- without any committee discussion, with limited initial floor debate, and with no opportunity in the House for a separate recorded vote -- only served to confirm to the public its dubious nature. The nationwide reaction against the action of last year, as you know, has been intense and sustained. The Internal Revenue Service has received more than 33,000 letters of

protest against their proposed regulations to implement the tax deduction for Members. I would like to submit for the record testimony which I presented on behalf of Common Cause to the IRS on May 11, 1982 in opposition to the proposed regulations.

Since last September the tax benefit issue has been on the floor of the House and Senate on at least five different occasions. Legislation has been attached to continuing resolutions, Black Lung legislation, supplemental appropriations and debt ceiling legislation. It is past time for Congress to settle this matter and to do so through a process that will enhance chances for public acceptance of the result. In this context, we believe that this Subcommittee makes a very positive contribution by holding these hearings.

Substantial majorities in the House and Senate have now gone on record, in response to overwhelming public opposition, as recognizing that last year's action was wrong and that the automatic $75 per day deduction it led to is unacceptable. The automatic deduction -- available for any "congressional day" and regardless of whether the Member is in Washington -- has been thoroughly discredited and fortunately no longer appears to be under serious consideration.

The urgent supplemental appropriation recently passed by the Senate included a provision that would repeal all of the changes made last year and restore the previous $3,000 limit on business-related travel expenses by Members (although the unlimited deduc-

tion for Members is allowed to stand for the year 1981). We have supported repealing last year's action as an interim solution because we believe it is important to have the status quo restored in order for Congress to put behind it the hailstorm of public criticism which has fallen upon it since the tax break was enacted last year.

We believe that Senator Long's proposal takes us to the next logical and appropriate step in dealing with this matter. It would result in Members of Congress being treated the same as similarly situated taxpayers who have to conduct their professional responsibilities in two places requiring travel and business-related travel expenses. It would remove the $3,000 cap on deductions, a figure set in 1954 and would also remove the special definition for a Member's principal place of business. It is this definition which has set the stage for Members -- and Members only -- to be eligible to deduct the normal daily costs of living at home.

As Senator Long stated when his legislation was introduced:

> . . . I would suppose that Washington would be seen as the principal post of duty or place of business for many Members of Congress -- even though their legal domicile would be elsewhere. If Washington is treated as a Member's principal post of duty, then his expenses for personal meals and a personal home in the Washington area would not be allowed. His expenses for travel away from Washington would be deductible business expenses, subject to the general rule that only reasonable expenses are deductible.

The basic approach contained in S. 2413 is correct in our view. It treats Members of Congress the same as all other taxpayers, no better, no worse. As noted earlier, however, there are defini-

tional and administrative problems that we believe must be addressed. Clearly the deduction should be applied only to unreimbursed legitimate business expenses -- the away-from-home business associated with a Member's official duties as a Member of Congress. Conversely, the deduction should not be available to Members of Congress with regard to expenditures made for political campaigning or other political purposes. If the deduction were allowed for political activities it would represent, in effect, an in-kind campaign contribution from the federal treasury, available only to Members of Congress and not their challengers.

We recognize that at times the task of separating political travel from travel related to official duties may not be an easy one. But we believe that steps must be taken to make clear that this distinction has to be drawn by Members, and by the IRS, in calculating what are legitimate business-related travel expenses for Members.

While the Long proposal in our view would eliminate any preferred tax status for Members of Congress, S. 2321, sponsored by Senator Mattingly would perpetuate special tax treatment for Members. Chairman Dan Rostenkowski of the Ways and Means Committee has sponsored a similar bill in the House.

The Mattingly/Rostenkowski proposal would allow Members to deduct as away-from-home business expenses all living expenses incurred in Washington, D.C. that can be substantiated. It incorporates the special provision in the tax law that automatically establishes a Member's tax home for federal tax purposes as the

state or congressional district that the Member represents, and therefore under S. 2321 Members of Congress -- and Members of Congress only -- are eligible to take as business deductions what are actually the normal everyday costs of living at home.

Under the Mattingly/Rostenkowski proposal, Members of Congress remain eligible to deduct normal living expenses that, according to the Internal Revenue Service's proposed regulations, may include all meals (including preparation and service), lodging, depreciation on residence and household furnishings, utilities, insurance, maintenance of residence, cleaning, laundry and local transportation.

We strongly urge the Committee to reject this proposal which will not eliminate a privileged tax status for Members of Congress and will not end the public uproar that such status has generated.

In summary, Common Cause believes that the tax benefits for Members adopted last year are unfair, unjustified and should be repealed. We have supported reimposing the previous $3,000 limit as an interim solution to the problems created by last year's legislation. We support the approach set forth in Senator Long's bill, S. 2413 to fully repeal the special provision for Members of Congress, as a long-term solution to the problem but believe steps must be taken to make clear that expenditures by Members for political purposes are not eligible for tax deductions. We strongly oppose the proposal of Senator Mattingly and Representative Rostenkowski which would carry forward, not eliminate, privileged tax treatment for Members of Congress.